IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.48 OF 2005

Ashok Mohanlal Lunkad & Ors. ...Petitioners

Versus

M/s.Lotus Enterprises & Anr. ...Respondents

ALONG WITH

CRIMINAL WRIT PETITION NO.49 OF 2005

AND

CRIMINAL WRIT PETITION NO.50 OF 2005

Dhiraj Subhash Lunkad & Anr. ...Petitioners

Versus

M/s.Lotus Enterprises & Anr. ...Respondents

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Mr.Venkatesh A.Shastre for Petitioners.

Mr.R.D.Soni i/b Ram & Co. for Respondent No.1.

Ms.R.M.Gadhavi, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 25, 2005.

P.C.

1. Heard Counsel for the parties. Counsel for the Petitioners fairly accepts that two companion Writ Petitions have been dismissed on merits by this Court on December 14, 2004, being Criminal Writ Petition Nos.2216 of 2004 and 2217 of 2004.

2. Learned Counsel, however, submits that in the present set of Petitions, he would confine the argument to the question that the Court before which the complaint has been instituted, has no jurisdiction. Indeed, such argument was neither raised nor considered in the abovesaid Petitions. To that extent, there is substance in the submission made on behalf of the Petitioners.

3. However, after going through the pleadings and the materials on record, it is not possible to quash the proceedings which is the prayer in the present set of Petitions for want of jurisdiction of the Trial Court. This is so because in the complaint as filed in Para 12, it is stated that the Complainants have their place of business at Mumbai and registered as well as administrative

office at Mumbai address. To get over this position, Counsel for the Petitioners would rely on the certificate issued by the Registrar of Firms, which suggests that the firm has commenced its business from Mumbai address with effect from 1st April 2003. It is submitted that the statutory notice is issued much prior to that. However, Mr.Soni for the Respondents would submit that the cause of action for filing complaint before the Mumbai Court also arose because of the statutory notice issued from Mumbai.

4. In my opinion, the issue of jurisdiction in the fact situation of the present case is a mixed question of fact and law, which will have to be decided at the trial. Hence, these Petitions are disposed of, leaving that question open.

A.M.KHANWILKAR, J.